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THE HIGH COURT

Ref. No. 8M/83

W.

PETITIONER

AND



P.

RESPONDENT



JUDGMENT of Mr. Justice Barrington delivered the 7th day of
June, 1984.

This is a petition for nullity of marriage.

It is a strange and sad case.

The petitioner and the respondent are both members of the Church of Ireland. Both have a rural background coming from adjoining counties in the South of Ireland. The petitioner is a book-keeper typist and the respondent is a farmer and agricultural contractor.

The parties first met at a Church of Ireland social in September 1977; became engaged in September 1978; married in May 1979 and parted in August 1981.

The marriage took place in accordance with the rights of the Church of Ireland. Relatives and friends of both parties attended the ceremony and a subsequent reception. The marriage took place during the postal strike and the bride and bridegroom made out a list of guests and each, in person, delivered invitations to their respective friends and relatives. The only unusual thing about the wedding was that the arrangements were made by the prospective bridegroom and not by the bride's parents. The bride's parents were hurt by this but did not make an issue of it.

The petitioner now seeks a decree of nullity on two grounds. The first is that her will was so overborne by threats and duress that she did not freely consent to the marriage. The second is that the respondent, because of his mental instability and emotional immaturity, lacks the capacity to form a normal adult relationship with a woman in marriage.

The respondent has entered no answer to the petitioner's petition. At the hearing the petitioner was represented by Mrs. Catherine McGuinness and the respondent by Mrs. Maureen Clarke but the respondent, himself, did not appear or give evidence. Mrs. Clarke attended the proceedings throughout but had no instructions on the basis of which

she could cross-examine the petitioner and, subject to one exception to be referred to later, took no part in the proceedings.

I should, however, say that I am quite (satisfied that there is no collusion) between the parties in relation to this petition. 9

I am also satisfied that there was no duress exercised by the 10 respondent against the petitioner in the commonly accepted meaning of the term duress. The respondent did not give evidence before me but emerges from the evidence as a shy, hard-working, harmless man of no danger to anybody except himself. [It has been submitted that he obtained emotional dominance over the petitioner of the kind discussed by the Court in Scott -v- Sebright (1886 12 P.D. p. 21) and in B. -v- D. (unreported judgment of Murnaghan, J. delivered 20th June 1973) but if he did gain such a dominance over her as to deprive her of her freedom to refuse to marry him this dominance took the form of emotional blackmail and was based on his weakness rather than on his strength. 11

For some years in the middle '70's the petitioner had been attending Dr. J. B. for minor medical complaints and he knew her well. Apart from these minor medical conditions which are of

no relevance to the present case, he would describe her as a perfectly normal girl. He described her as "a very ordinary kind of girl/a kind and gentle personality". I am satisfied that this view of the petitioner's character is correct. I am also satisfied that the story she has told is true. But it reveals her to have been extraordinarily naive and easily influenced.

The petitioner met the respondent at a Church of Ireland social in September 1977. At that time she was aged 28. He was about 30. She was training as a nurse in England and was home on holidays in Ireland. The respondent appears to have been immediately taken by her. He saw her home and wrote to her after her return to England.

The petitioner returned to Ireland in October 1977 and thereafter the respondent saw her frequently. The petitioner told him that she was not interested in him as a future husband but he begged her to give him a chance. They saw each other about once a week. He seemed to be obsessed by her and she was, naturally, flattered by this.

In June 1978 the respondent got very drunk at a wedding. The petitioner, who did not drink, had to drive him home. She was very cross with him. She subsequently visited him at his home and told him she was breaking off their friendship. He got very upset and told

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her he worshipped her. He called his mother and told her that the petitioner was breaking off with him. His mother got down on her knees, caught both of them by the hands and prayed that they would be happy together. The respondent said that if the petitioner left him he would die. (C)

The petitioner returned to Dublin where she was then working. She had decided not to see the respondent again but the respondent's mother and sister came to visit her in Dublin and said that the respondent was in a terrible state. She said he was selling up all his farm machinery. The mother begged the petitioner to come down to see him. The petitioner gave way and promised to go down to see the respondent on the following week. The relationship between them resumed after that. (D)

In September 1978 the respondent asked the petitioner to become engaged to him. She did not wish to become engaged. But the respondent said he wished to buy a house with some 17 acres which was near his parents farm and that his chance of getting a loan from the bank would be greatly increased if he was engaged to be married. The petitioner felt "she was pushed into agreeing". They both went to
D engaged.

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Dublin by train together and bought a ring at (McD's). The respondent put an announcement in the public papers.

The engagement ring was a beautiful one and the respondent's mother appeared strangely upset when she saw it. The respondent appeared very happy but the petitioner was unhappy and felt trapped. When she got home she cried.

Two nights later the respondent came to visit her at her parent's home. She determined to end matters between them. She offered him his ring back and said she did not wish to marry him. He appeared shocked and said "if my parents knew what you are saying". He got an attack of breathlessness and began to choke. He appeared not to be able to breath and she became very frightened. He recovered but said he was going to shoot himself. She took this threat seriously.) ✓ She knew he had guns - his own and his father's. Besides, there was a story circulating in the locality about a local boy having shot a local girl in a lover's quarrel.

She was frightened that if she broke off the engagement he would commit suicide and that she would have this on her conscience.

In January 1979 she again attempted to break off the engagement and

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again he threatened to commit suicide. He threatened to drive over a dangerous bridge in the area at which several people had been killed. He said that if she wrote to him breaking the engagement that he would shoot himself. He convinced her of the seriousness of these threats and she believed him. She was so frightened that she felt she had no power of decision.

The respondent proposed that they get married in April or May 1979. The petitioner temporised and wanted to push the wedding back to September, but the respondent insisted on May and made the arrangements, the petitioner co-operating to the extent previously indicated.

Apart from the fact that the respondent took the arrangements out of the hands of the bride's parents, the wedding itself was, to all outward appearances, a perfectly normal one. One slightly odd incident did, however, take place before it.

Canon J. was not the officiating clergyman at the wedding but was Rector of the respondent's parish. Traditionally the respondent's family had been members of the Church of Ireland and staunch supporters of all the Church functions. In more recent years, however, the

respondent's mother had joined some fundamentalist protestant sect and the family had ceased to attend religious services at the Church of Ireland. However, the respondent invited Canon J. to the wedding and called and delivered an invitation in person. Canon J. enquired if the bride was a member of the Church of Ireland. The respondent was, apparently, enormously upset by this remark and later returned - drunk - to the rectory and demanded his invitation back. Canon J. returned the invitation and did not attend the wedding. He had, however, misgivings about the wedding. He did not attach any great significance to the incident concerning the invitation. He had no misgivings concerning the bride but he had misgivings as to whether the respondent would make a suitable husband for her. He thought of telephoning the officiating clergyman and telling him of his misgivings but, on reflection, he felt he had not anything sufficiently concrete to go on and that he would not be justified in interfering. In the event he did nothing.

The parties spent their honeymoon in Scotland. It was his choice. She got some form of stomach upset on the honeymoon and felt very sick. She remembered them staying in a small town. She was weak

and was lying on the bed. She asked him to go to a chemist shop to get some medication. He began to cry. He was obviously upset at her being ill and said he would never go anywhere with her again. He said that if she went into hospital he wanted to come too because he could not be on his own. He asked her to come with him to the chemist but she said she was too sick. He said, "I can't go on my own. I am afraid in a strange town."

The town was merely a village with one main street. Ultimately, she persuaded him to go. He came back later and was obviously delighted to be back safe. He explained to her how he had watched out for signs to ensure that he would not go astray. She said it was like being with a 5 year old child.

In the course of their honeymoon they went on a trip to the Isle of Skye. She was still feeling a bit sick and lay on the bed in their hotel bedroom. He went downstairs to the bar. When he came back he was strange looking. Drink had that effect on him. He started to box his head with his clenched fists. He kept hitting himself. She restrained him but not before he had raised lumps on his head. He could not speak and started to cry. She was afraid to be in the room

with him. For the first time she realised that he was abnormal.

She felt trapped. She realised that she had given up her flat and her job and landed herself in this situation.

(On their return from their honeymoon they went to live in a chalet on his parent's lands. About a week later she found him beating his head off a door. He often had two fits of this kind in one week. He would be normal in between. On one occasion when she was getting tea he picked up a poker and started hitting himself with it. She ran and got the poker from him.

On another occasion he put his head over a gas ring and started inhaling gas. She turned the gas off. He used often hold his nose and his mouth and appear to attempt to smother himself. These actions were temper tantrums and would appear to be started for no obvious reasons.

Sometimes he would lock himself in his bedroom. He would stamp on the floor and cry. She would then coax and pet him like you would a sulky child and gradually would bring him back to good humour.

The marriage was consummated. The parties had some sexual problems at the commencement of their marriage but, I am satisfied,

that these were not of major importance and are not relevant to anything which I have to decide. There were no children of the marriage.

After some months of marriage the petitioner became ill. She got very weak and was not able to do her housework. The respondent appeared to resent her being ill making such remarks as, "There is nothing wrong with you; you brought it on yourself". The petitioner wanted to see Dr. S. who was a doctor from her own area in whom she had faith. But the respondent refused to take her to see Dr. S. Every day the petitioner got weaker. One night she collapsed and the respondent became very upset and said, "My little girl - she is going to die". But he still refused to get the doctor. His mother did, however, get a doctor. After this episode the respondent took her to see Dr. S. who diagnosed her as suffering from some form of kidney complaint and severe anaemia. She stayed with her parents while she was attending Dr. S. and gradually improved under his treatment. The respondent was very upset about her staying away from home. In December 1979 the respondent's mother and sister came to visit the petitioner at her parent's home. The sister said that the respondent was on hunger strike because his

wife would not return to him and that he was going to die. His mother stood by crying. The petitioner agreed to return with them. When they arrived at the respondent's family home the respondent was upstairs in bed. When he heard his wife was back he got out of bed and said "Mother make a fry for me".

The petitioner remained with her husband until August 1981. He continued to have tantrums, to box his head and to break up furniture in temper fits.

Corroboration

I have already stated that I believe the petitioner to be a truthful and reliable witness. Nevertheless her story is so extraordinary that one is relieved to have some corroboration of it. Sometime around Christmas 1980 the petitioner's mother came to stay with the petitioner and the respondent at their chalet. The petitioner and her mother went on a shopping expedition. They had intended to buy some rashers for tea but forgot to do so. It was the petitioner's intention to slip into the local village in her car to buy them after she and her mother had returned home. But when she went to get her car to drive

into the village she found that one of the workmen had borrowed it. The petitioner told the respondent that he would have to do without rashers for his tea but that she would get some later. He left the house and went out into the yard. Sometime later the petitioner's mother went out looking for him. She found him lying over a tractor crying. The mother went back to the chalet to call the petitioner but when the two women went out the respondent was missing.

(Ultimately, they found the respondent lying on the ground in the muck.

He was twisting and turning in paroxysms of grief or anger. There was a cement block near his head and the women were afraid he would hit his head off this and do himself an injury. They lifted him up. He never spoke. He was covered with mud and soaking wet. Ultimately, however, the petitioner succeeded in calming him down. He cheered up, tidied himself, had his tea and went off to milk the cows.

During the mother's same visit the petitioner and the mother were looking at television one night. The mother heard a thumping sound and enquired what it was. The petitioner went to their bedroom and found the respondent seated on the bed slowly beating the floor

with his feet. This was something new to the mother but it was something which the petitioner frequently saw. Sometimes he would beat his head or his body against a wall or sometimes he would hit himself on the head with his fists or with an instrument.

Respondent's relationship with his mother

The respondent's relationship with his mother was strangely intense. There was no doubt that he loved her but he seemed to have the same obsession about her as he had about the petitioner. He would run and kiss her and they would cling to each other.

(After the marriage it emerged that the husband could not keep household or farm accounts because he could not write properly. This puzzled the petitioner and she referred to the love letters she had received from him. He confessed that these letters had been written for him by his mother. He said he wrote so badly that he was afraid that, when she saw his handwriting, she would not answer his letters. He, accordingly, got his mother to draft the letters for him and he, painstakingly, transcribed them in his own hand.

The Respondent left school at the primary grade. In fact he had received very little education as he was often absent from school with various childish ailments.

I have referred already to the mother's strange reaction when the petitioner showed her engagement ring. Another strange incident took place when the petitioner was ill. (The petitioner wanted to have a bath. But she was lying in bed and felt too weak to make her way to the bathroom. The respondent ran a bath for her, carried her to the bathroom and was gently sponging her down when his mother opened the door and came in. She addressed him by his christian name and reproached him with the remark, "You never did that for me".

Final break

The final break between the parties took place because of the respondent's reaction to a trivial incident. One Sunday towards the end of July 1981 the respondent's 12 year old niece and her mother were visiting the Petitioner and Respondent. It was a lovely day and the petitioner suggested to the respondent that they all go for a drive. The respondent was a very hard worker and worked all the week, Sundays included

The petitioner gently suggested to him that he should take some time off. He got very angry. He ran into the bathroom and she could hear him crying there. He then went to the bedroom and started beating his head. The niece's mother and the petitioner asked the young girl to leave the house. The petitioner opened the door of the bedroom. The

respondent was there beating his head. (He was vicious looking. He got up and ran out of the house. The petitioner followed him and found him in the cattle shed. There was a wire rope hanging from the roof of the cattle shed with a ring at the end of it. He was trying to get his head into the ring to hang himself. After a struggle the petitioner succeeded in forcing his head out of the ring. But he got away from her again and next appeared on a high wall near the out-house. He threatened that he was going to jump. Ultimately, the petitioner calmed him and persuaded him to come down. After that she considered the possibility of having him committed to a mental hospital. But the following morning he came to her and he said, "You get out of this house; I don't want you." The petitioner left after that and returned to her parents. She has never seen the respondent since.

Medical evidence

Dr. B. is a general practitioner who knew the petitioner well but never met the respondent. He only knew of the respondent's behaviour from the accounts given to him by the petitioner. Not being a psychiatrist he could not express a professional opinion as

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to the implication of the respondent's behaviour. But he described it as, "not normal behaviour" and "very unusual".

Dr. S. was also a general practitioner but had the advantage of knowing both the petitioner and the respondent. He spoke to the respondent and told him that his tantrums and scenes were causing the petitioner great distress. This was after the first separation and while the petitioner was staying with her parents and undergoing medical treatment from Dr. S. The respondent admitted that he was subject to these fits but said he could not control them. Dr. S. accepted that this was true. Dr. S. considered that the respondent was terribly immature. His immaturity was of such a degree as to be pathological or unhealthy.

At this time in Dr. S's opinion, the petitioner was very run down because of her kidney infection and chronic anaemia. She was also very unhappy because of her matrimonial problems. But she was generally a perfectly healthy young woman with no psychological problems. She was not able to cope with her husband but it would have been beyond most people's ability to cope with him.

Dr. S. considered that the respondent's relationship with the

petitioner was very unhealthy. He considered that the respondent had the emotional maturity of a 5 year old child who was subject to hysterical outbursts of temper if he could not get his own way. He appeared to be incapable of controlling his emotions. In his view, the respondent was not capable of forming a normal relationship with a woman. His relationship with the petitioner was immature and possessive like the relationship of a small child with its mother. His relationship was outside the bounds of normality for an adult person.

Dr. S. was an extremely impressive witness. He had the advantage of knowing both petitioner and respondent and the maturity of judgment which comes with a lifetime spent in general practice. He was not, however, a professional psychiatrist and declined to give a professional opinion on psychiatric matters.

In view of the nature of the case being made by the petitioner I was anxious to have the assistance of evidence from a psychiatrist. I told counsel this.

Both counsel agreed to have their respective clients examined by a

psychiatrist and I adjourned the case to allow such an examination to take place. I should make it clear that I did not direct the examination. The parties counsel volunteered that their clients would submit to it.

In the event Dr. J. D. B., the well known consultant psychiatrist, interviewed both parties and members of their respective families. He prepared an exhaustive report which was, on consent, admitted in evidence, and also gave evidence at the resumed hearing. The result was generally to confirm the portrait of the respondent painted by the petitioner and to reinforce the judgment of Dr. S.

In Dr. B.'s opinion the respondent's degree of underdevelopment and immaturity of personality was such as markedly to impair his capacity to sustain a normal and viable marriage relationship. As I understood him Dr. B. did not suggest that the respondent could never have a successful marriage. But he could never have a marriage consisting of a normal relationship between two adults. } There might be women who would be content to mother the respondent and to manage him as one might a child but this would not be the kind of relationship between two adults which people would generally expect in marriage. Certainly the

petitioner could not cope with his emotional immaturity and the marriage between them could not be a success. This situation was made worse by the fact that the petitioner herself felt that she had been entrapped into the marriage.

The Law

The petitioner puts her case on two alternative bases. The first is that she did not really consent to the marriage. I find this a difficult proposition but I do not propose to deal with it in view of the conclusion I have reached in relation to the second proposition. This is that the respondent's emotional immaturity is such that he lacks the capacity to enter into a normal marriage conceived of as a caring or considerate relationship between two adults of the opposite sex.

On the disestablishment of the Church of Ireland the Matrimonial Causes and Marriage Law (Ireland) Amendment Act 1870 transferred to a new civil court for matrimonial causes and matters the jurisdiction formerly exercised by the ecclesiastical courts of the Church of Ireland. Section 13 of the Act of 1870 required the new court to act and give relief on principles and rules which, in the opinion of

the court, were as nearly as may be, conformable to the principles and rules on which the ecclesiastical courts had up to then acted.

There can be no doubt that, prior to 1870, the ecclesiastical courts would not have granted a decree of nullity in a case such as the present. However, as Mr. Justice Kenny said in S. -v- S. (unreported 1st July 1976) the effect of section 13 of the 1870 Act was not to fossilise the law in the state in which it stood at that date. That law had been, to some extent at least, judge-made law and our Courts should recognise that the great advances made in psychological medicine since 1870 made it necessary to frame new rules to reflect them.

Put in another way, it could be stated that modern medicine gives us new insights into the institution of marriage and to the principles of law which govern it. Our law regards marriage as a life-long association between one man and one woman. This seems to contemplate that each partner should have the capacity to live in society with the other. The law has always recognised that there are certain incapacities, e.g. impotence, which make the marriage voidable at the option of the other. But the kind of incapacity

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or immaturity from which, I am satisfied, the respondent suffers in the present case is much more destructive of a normal marriage.

As I remarked in R.S.J. -v- J.S.J. (unreported 11th January 1982)

I am sure there could be and have been successful marriages where one of the parties was impotent. But the incapacity or immaturity from which the respondent suffers in the present case is one which makes a successful marriage almost impossible.

I did not grant a decree of nullity in R.S.J. -v- J.S.J. partly because in that case the person under the psychological disability was the petitioner and the respondent wished to affirm the marriage.

But since then the entire matter has been fully considered by

Mr. Justice Costello in the case of (D. -v- C) who granted a decree of nullity on the ground that, at the time of the marriage, the respondent in that case was suffering from a psychiatric illness and as a result was unable to enter into and sustain a normal marriage relationship with the petitioner. (See his unreported judgment dated the 19th May 1983).

I respectfully adopt his analysis of the law and agree with his conclusion.

I am quite satisfied that the petitioner in the present case

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elected to avoid the marriage as soon as she became aware of her
 rights and that she has not waived from that position since. She
 first went to see a solicitor after she left the respondent in
 August 1981. He advised her that she might be able to bring an
 application to have the marriage annulled. This was the first time
 she became aware of this possibility. He also advised her that the
 costs of such proceedings would be considerable and, unfortunately,
 she had not the resources to defray those costs. She then
 consulted with ecclesiastical authorities in the Church of Ireland
 who put her in touch with another solicitor. Ultimately, she was
 referred to the Legal Aid Board who required counsel's opinion on
 the prospects of success before agreeing to undertake the case.
 The petition was ultimately presented on the 31st September 1982.
 In all the circumstances I am satisfied that any delay which took
 place was in no way the fault of the petitioner.

Under these circumstances I think that the petitioner is
 entitled to a declaration that her marriage to the respondent is
 and was null and void because the respondent, at the time of the
 marriage, was suffering from such psychological or emotional

disability or incapacity as made it impossible for him to enter
into and sustain a normal marriage relationship with the petitioner.

John B. S.